

AGREEMENT BETWEEN TENANTS IN COMMON

This Agreement is entered into by and between Mario C. Fiorio and Ines B. Fiorio, co-trustees of the Fiorio Family Trust dated December 12, 1992, and Yvonne L. Valencia, Trustee of the Valencia Family Bypass Trust, dated December 19, 1995. It is dated for reference purposes as of August 9, 2010.

WHEREAS:

- A. The real property which is the subject of this Agreement is located at 7515 Goodman Road, Olive Branch, Mississippi 38654, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").
- B. Ownership of the Property is vested in Mario C. Fiorio and Ines B. Fiorio, co-trustees of that Fiorio Family Trust dated December 12, 1992 as to an undivided 83.6768% interest, and Yvonne L. Valencia, Trustee of the Valencia Family Bypass Trust, dated December 19, 1995, as to an undivided 16.3232% interest, as tenants in common.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All insurance required herein shall name each and every Tenant-In-Common as an additional insured.
- 2. All expenses, including, but not limited to, any loans or encumbrances, all secured real property taxes and assessments, insurance, maintenance and all other routine and ordinary expenses relating to the Property, shall be borne by the co-tenants in proportion to their respective interests in the Property.
- 3. All profits and losses shall be allocated to the co-tenants in proportion to their respective interests in the Property.
- 4. Any and all improvements made to the Property shall not result in an increased ownership interest for the party making such contributions.
- 5. No party to this agreement acting alone or in concert shall grant any third party any security interest in either the entire Property or that party's interest in the Property. A mortgage, deed of trust or other

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security interest shall only be effective if executed by Mario and Ines Florio, and Yvonne Valencia.

6. If any co-tenant fails to make a timely payment of the amount due from them, then the other party shall have the option, but not the obligation, of advancing on behalf of the delinquent party some or all of the amount not paid. Any such amount advanced shall bear interest at the lesser of ten percent (10%) or the maximum interest rate allowed by law, whichever is less. Repayment of such advances shall not be secured by the party's interest in the real estate unless there is a separate writing expressly providing for such security, and a deed of trust with a private right of sale is recorded as to that party's interest. Unless a deed of trust is recorded, the party making the advance shall be entitled to bring a court action against the other party seeking repayment of the advance plus interest and costs. The prevailing party shall also be entitled to recover their actual attorney's fees incurred in prosecuting or defending the action.
7. The term of this Agreement shall extend until October 14, 2020, and shall automatically renew for a succession of additional five (5) year terms unless one party gives the other party a written notice of their desire to not have the Agreement renew. If the Agreement does not renew, then the Property shall be listed for sale to a third party through a licensed real estate broker and sold by the owners within a reasonable time, and the terms of this Agreement shall remain in effect until such time as the Property is sold.
8. Mario and Ines Florio and Yvonne Valencia waive any right of partition.
9. The parties to this Agreement do not intend to own this Property as a partnership, but rather to own the Property as Tenants-In-Common.
10. **RIGHT OF FIRST REFUSAL**
 - a) Each co-tenant shall not sell or agree to sell their co-tenancy interest in the Property without first offering the same to the other co-tenant. The word "sell" shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of their co-tenancy interest, except for a conveyance or transfer by gift, bequest, or inheritance. After a conveyance or transfer by gift, bequest, or inheritance, the right of first refusal granted in this Agreement shall remain in effect against the person acquiring said interest.

- b) Before a co-tenant sells or agrees to sell their interest, they shall offer ("First Offer") to sell their interest to the other co-tenant in writing and on terms and conditions substantially identical to those proposed for the sale of their interest to a third party. The First Offer shall, at a minimum, include the following information: (i) the purchase price proposed for the sale to the third party; (ii) the method of purchase price payment; (iii) the amount and terms of any proposed co-tenant financing in connection with the proposed purchase; (iv) the amount of any earnest money deposit; (v) the time and location for the close of escrow; (vi) the name of the proposed purchaser; and (vii) the other material terms and conditions of the proposed sale of their interest.
- c) Each co-tenant shall have sixty (60) days from the date of the First Offer to accept the First Offer ("Acceptance Period") by delivering to the selling co-tenant the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period. If any co-tenant fails to accept the First Offer on or before the last day of the Acceptance Period, the First Offer shall be deemed to be rejected.
- d) If the co-tenant receiving the First Offer responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, the right of first refusal shall terminate and the response shall be deemed an offer to purchase the Property on the terms and conditions in the response ("Counter Offer"). The selling co-tenant shall be entitled to accept or reject the Counter Offer at that co-tenant's sole discretion, provided that the Counter Offer may not be accepted if a co-tenant has unequivocally and unconditionally accepted the First Offer, in which case, the unequivocal and unconditional acceptance shall be the only acceptance. If the Counter Offer is rejected, the selling co-tenant shall have no further obligations under this Agreement.
- e) If a co-tenant accepts the First Offer, said co-tenant shall have 120 days following acceptance of the First Offer ("Closing Period") to consummate the purchase pursuant to the terms and conditions of the First Offer. If said co-tenant fails to consummate the purchase within the Closing Period, any earnest money paid by co-tenant pursuant to the acceptance shall be paid to selling co-tenant as said co-tenant's liquidated damages,

and the agreement to purchase the co-tenancy interest together shall be terminated.

- f) If within 60 days after the co-tenant rejects the First Offer the selling co-tenant enters into negotiations with a third party and is otherwise willing to enter into an agreement with that party on terms less favorable to the selling co-tenant than those contained in the First Offer, then the selling co-tenant shall offer to sell their interest to the other co-tenant on those new terms by giving written notice ("Second Offer"). The co-tenants shall have the same rights of acceptance and rejection provided for the First Offer.
 - g) Each co-tenant's right of first refusal shall begin with the date of this Agreement and continue until termination of the co-tenancy, unless terminated sooner in accordance with the terms of this Agreement.
 - h) The rights herein shall inure to the benefit of and be binding on the parties and their respective successors, heirs, and assigns, and shall not terminate upon sale of a co-tenant's interest.
11. This Agreement shall not adversely affect the rights of any lender whose loan is secured by the Property or any other third party that is the beneficiary of a joint and several obligation of Mario and Ines Fiorio and/or Yvonne Valencia.
 12. This Agreement shall run with the land. It shall be binding upon, and in inure to the benefit of, the heirs, successors, and assigns of the parties. The parties shall cause either this Agreement or a short form of this Agreement to be recorded in the Official Records of the County where the Property is located.
 13. This Agreement may be amended at any time, but any amendment must be in writing and signed by each party to be effective.
 14. Each party shall execute such documents as may be reasonably necessary to effect the purpose of this Agreement.
 15. The parties agree to mediate any dispute or claim arising between them out of this agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies,

without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorneys' fees, even if they would otherwise be available to that party in any such action.


ARBITRATION OF DISPUTES


16. The parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration before a retired Santa Clara County Superior Court Judge, unless the parties mutually agree to a different arbitrator. Said arbitrator shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Article III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator may be entered in any Court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION, IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

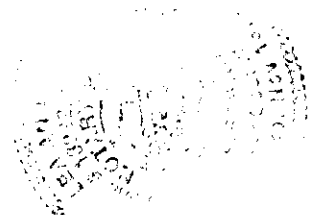
WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL

ARBITRATION."


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17. In the event of a dispute concerning the interpretation of enforcement of this Agreement, the prevailing party shall be entitled to

recover its reasonable attorneys' fees and costs, including costs of arbitration.

18. This Agreement is executed in and intended to be performed in the State of California, and the laws of that state shall govern its interpretation and effect.

19. This instrument contains the entire agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the parties to be charged.

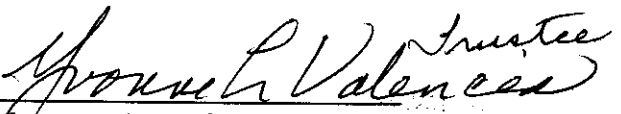
Dated: 18 Oct 10

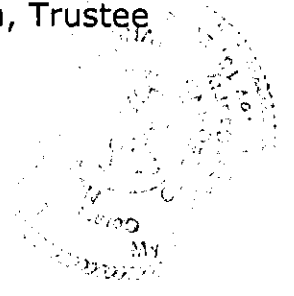

Mario C. Fiorio, Trustee

Dated: 18 Oct 2010


Ines B. Fiorio, Trustee

Dated: 10-21-2010


Yvonne L. Valencia, Trustee



State of

California

County of

Santa Clara

On

10-18-2010

before me,

JANET K. WALLACE

a Notary

Public, personally appeared

MANU C FIORIO AND JANE B. FIORIO

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

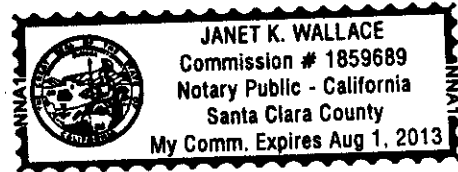
Signature

JANET K. WALLACE

Name:

JANET K. WALLACE

(typed or printed)



(Area reserved for official notarial seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

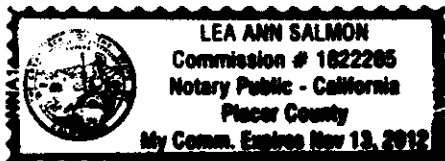
State of California

County of PlacerOn Oct 21, 2010 before me,

Here Insert Name and Title of the Officer

personally appeared

Name of Signer



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/(he)/their authorized capacity(ies), and that by his/(he)/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

**RIGHT THUMBPRINT
OF SIGNER**
 Top of thumb here

Signer Is Representing: _____

**EXHIBIT A
LEGAL DESCRIPTION**

Unit No.: 52074

Property Address: 7515 Goodman Road, Olive Branch, MS

ZIP 38654

PARCEL I:

LOT NO. 1 OF PHASE 2, VILLAGE SHOPS OF CRUMPLER PLACE SUBDIVISION, AS SHOWN ON PLAT OF RECORD IN PLAT BOOK 60, PAGE 24 BEING LOCATED IN SECTION 32, TOWNSHIP 1 SOUTH, RANGE 6 WEST, OLIVE BRANCH, DESOTO COUNTY, MISSISSIPPI.

BEGIN AT THE NORTHWEST CORNER OF SECTION 32, TOWNSHIP 1 SOUTH, RANGE 6 WEST; THENCE SOUTH $00^{\circ} 42' 02''$ WEST 99.06 FEET TO A POINT; THENCE SOUTH $89^{\circ} 17' 58''$ EAST 2960.33 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF GOODMAN ROAD TO A CHISEL MARK (FOUND); SAID MARK BEING THE TRUE POINT OF BEGINNING FOR THE HEREIN DESCRIBED LOT; THENCE SOUTH $89^{\circ} 17' 58''$ EAST 221.01 FEET ALONG SAID RIGHT OF WAY TO AN IRON PIN (FOUND); THENCE SOUTH $00^{\circ} 40' 15''$ WEST 240.94 FEET TO AN IRON PIN (FOUND) IN THE NORTHERLY LINE OF A 40 FOOT INGRESS-EGRESS EASEMENT; THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 16.80 FEET, DELTA ANGLE OF $06^{\circ} 25' 06''$, RADIUS OF 150.00 FEET, TANGENT LENGTH OF 8.41 FEET TO AN IRON PIN (FOUND); THENCE NORTH $89^{\circ} 17' 58''$ WEST 170.51 FEET ALONG SAID EASEMENT TO A CHISEL MARK (FOUND); THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 53.00 FEET, DELTA ANGLE OF $89^{\circ} 58' 03''$, RADIUS OF 33.85 FEET, TANGENT LENGTH OF 33.73 FEET TO A CHISEL MARK (FOUND) IN THE EASTERLY LINE OF A 30 FOOT INGRESS-EGRESS EASEMENT; THENCE NORTH $00^{\circ} 40' 15''$ EAST 206.27 FEET ALONG SAID EASEMENT TO THE POINT OF BEGINNING.

PARCEL II:

TOGETHER WITH ALL EASEMENT RIGHTS AND APPURTENANCE WITH RESPECT TO INGRESS AND EGRESS TO THE PREMISES AS GRANTED IN THAT CERTAIN RECIPROCAL EASEMENT AND OPERATION AGREEMENT DATED FEBRUARY 25, 1998 AND RECORDED IN BOOK 331, PAGE 132 IN THE OFFICE OF THE CHANCERY CLERK, DESOTO COUNTY, MISSISSIPPI.

Original

PLEASE RETURN DOCUMENT TO:

First American Title Insurance Company
National Commercial Services
911 Main, Suite 2500, Kansas City, MO 64105
Attention: Karen Keebler
FILE NO. 454929

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Olive Branch MS
Store 52074